

Docket No. 193,472

Respondent appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Award, dated December 6, 1995, granted claimant certain medical benefits but denied temporary total disability and permanent partial disability benefits. The Appeals Board heard oral argument March 5, 1996.

Claimant appeared Pro Se. The respondent and its insurance carrier appeared by their attorney, Clifford K. Stubbs of Lenexa, Kansas.

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

Respondent asks for review of the findings and conclusions by the Administrative Law Judge on the following issues:

- (1) Whether claimant gave timely notice;
- (2) Whether claimant made timely written claim;
- (3) Whether the Administrative Law Judge erred in awarding claimant unauthorized medical expense; and
- (4) Whether the Administrative Law Judge erred in providing in her Award that claimant would have the right to present sworn medical testimony

regarding the nature and extent of his permanent impairment by seeking review and modification of the Award.

Claimant has not asked for review of any of the findings of the Administrative Law Judge.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds as follows:

(1)(2) On the issues of timely notice and timely written claim, the Appeals Board adopts as its own the findings of fact and conclusions of law stated by the Administrative Law Judge on these issues in her Award of December 6, 1995.

(3) With regard to the Award for unauthorized medical expenses, the Appeals Board finds that all medical expenses incurred by the claimant were awarded as benefits in this case and the record indicates there was no unauthorized medical expense incurred. The Appeals Board, therefore, concludes the portion of the Award granting claimant unauthorized medical expense up to the statutory maximum should be deleted from the Award.

(4) That portion of the Award referring to review and modification should also be deleted. The record in this case shows that claimant was afforded the opportunity to present evidence relating to the nature and extent of his permanent disability, if any. Claimant did not present such evidence. The Administrative Law Judge ultimately concluded claimant had failed to meet his burden and, therefore, awarded no benefits for permanent partial disability. The Administrative Law Judge did state in her Award, however, that claimant would have the opportunity to present such evidence by application for review and modification. Review and modification is a procedure available when circumstances change after the initial award. It is not a procedure intended to allow a party to re-litigate an issue which he/she had an opportunity to litigate as part of the original claim. See, Gile v. Associated Co., 223 Kan. 739, 576 P.2d 663 (1978).

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated December 6, 1995 is modified to read as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Phokham Thanasith, and against the respondent, Coleman Company, Inc., and the insurance carrier, Continental Casualty Company, for an accidental injury sustained on January 19, 1994.

The claimant is entitled to have the medical bills from Drs. Baker, Melhorn, Estivo, Malone and their referrals paid as authorized medical.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fee lien is approved.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

Barber and Associates	
Transcript of Regular Hearing	\$260.50
Deposition Services	
Transcript of Settlement Conference	\$145.50
Ireland Court Reporting	
Transcript of Regular Hearing	\$207.04

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Phokham Thanasith, Pro Se  
Clifford K. Stubbs, Lenexa, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director